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AN ORDINANCE
BY: ZONING COMMITTEE

Z-07-61
Date Filed: 5-21-07

AN ORDINANCE TO AMEND THE 1982 ZONING ORDINANCE OF THE CITY OF ATLANTA, AS AMENDED, SO AS TO CREATE A NEW SECTION 16-29.001(67) TO PROVIDE FOR A DEFINITION OF RAIL TRANSPORTATION COMMUNICATIONS FACILITIES; AND TO CREATE A NEW SECTION 16-28.024 TO PROVIDE FOR THE PERMITTING OF RAIL TRANSPORTATION COMMUNICATIONS FACILITIES; AND FOR OTHER PURPOSES.

WHEREAS, the City acknowledges that the Federal Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.* (the "ICCTA") preempts the City's regulation of rail transportation, including, but not limited to, the application of local zoning and telecommunications ordinances including the 1982 Zoning Ordinance of the City of Atlanta, as amended (the "Zoning Ordinance"); and

WHEREAS, such preemption extends to the location, construction and operation of poles, towers, antennas, antenna arrays, communications equipment and equipment cabinets, security fences, barriers and other necessary or helpful improvements which are constructed and used for purposes related to rail transportation or rail line communications and which are located within railroad rights of way or on lands owned by a railroad or railroads, expressly including the antennas, antenna arrays, equipment and equipment cabinets (collectively hereinafter "Rail Transportation Communications Facilities"); and

WHEREAS, the City desires to avoid costly and needless litigation over the scope of the ICCTA's preemption of the Zoning Ordinance with respect to Rail Transportation Communications Facilities; and

WHEREAS, the City desires to designate as exempt from the provisions of the Zoning Ordinance such Rail Transportation Communications Facilities, expressly including, but not limited to, such antennas, antenna arrays, equipment and equipment cabinets collocated on such communications facilities by other parties; and

WHEREAS, the City's policy is to encourage the joint use of new and existing towers by wireless telecommunications service providers;

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS, AS FOLLOWS:

Section 1: That Section 16-29.001 of the Zoning Ordinance be amended to add Section 16-29.001(67) entitled "Rail Transportation Communications Facilities," which shall read as follows:

Rail Transportation Communications Facilities. Antennas and communications equipment including antenna arrays, poles, towers, equipment cabinets, security fences, barriers and other accessory structures located within railroad rights of way or on lands owned by railroads which are used for purposes related to rail transportation or rail line communications such that denial of the right to locate such facilities as requested would constitute regulation of rail transportation in violation of 49 U.S.C. 10501 as it now reads or as it may be amended from time to time.

Section 2: That Section 16-28.024 of the Zoning Ordinance which is presently "reserved" is to be amended to add a new section entitled "Rail Transportation Communications Facilities," which shall read as follow:

16-28.024 Rail transportation communication facilities; collocation of private antennas on such facilities.

(a) A building permit is required for rail transportation communication facilities but no special administrative permit is required.

(b) Collocation of private antennas and other types of communications equipment is permitted on antenna or tower structures or as part of other rail transportation communication facilities and shall be allowed, provided that:

(i) No part of the private collocated antenna may exceed the height of the exempt structure and any accessory equipment or structures shall be no larger than necessary to support the collocated antennas.

(ii) The collocation of the private antenna and any accessory equipment or structure may remain in place only so long as the exempt structure is used for rail transportation or rail line communications.

(c) Where collocation of private telecommunications antennas is intended on antennas or towers constructed or to be constructed as a part of a rail transportation communication facility, and notwithstanding other special administrative permit requirements elsewhere in this part, a special administrative permit for such collocation is required and shall be issued upon a showing that the requirements of subsection (b) have been met. Accessory equipment and structures necessary to support the private collocation shall be included as a part of such permit applications. The collocation permit

applications for private telecommunications antennas shall be on a form developed by the director of the Bureau of Planning and shall be granted or denied within 15 business days from the time that a complete application is received.

(d) Rail transportation communication facilities for multiple sites and equipment configurations where collocation of private telecommunications antennas is intended may be analyzed and permitted as a part of a long term development master plan permit agreements whereby the Bureau of Planning may issue individual special administrative permits on an expedited basis for an individual site that was included in and is fully consistent with the terms of the master plan. Such agreements shall not be subject to the requirement of processing within 15 business days but shall be processed within 45 days after submission.

Section 3: In the event that the codification section or subsection numbers specified in this ordinance are in conflict with existing code section numbers, the codifier is authorized to use the next available number for the applicable section or subsection.

Section 4: This ordinance shall become effective immediately upon signing by the Mayor or as otherwise provided by the operation of law.

**PROPOSED RAIL TRANSPORTATION
COMMUNICATIONS FACILITIES ORDINANCE
FACT SHEET**

Background:

*Communications towers built on railroad property and used by railroads as part of their railway activities are exempt from City zoning requirements under Federal law.

*Private party collocation on such an exempt tower may be exempt from City zoning requirements under Federal law.

*The proposed ordinance gives the City control over collocation on these towers.

*The proposed ordinance promotes the City's existing policy of encouraging the joint use of new and existing towers.

Under the proposed ordinance:

*Railroad towers would still require a building permit (but no SAP)

*A private party can only obtain an SAP to collocate on a railroad tower by showing:

- (i) the collocated antenna is lower than the exempt railroad structure.
- (ii) the railroad structure is and has to continue to be used for rail transportation or rail line communications.

*The SAP application is to be processed within 15 business days.

*An applicant may submit a master plan permit for multiple sites to be processed within 45 days.